

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1283

Applications for Review of Hearing Decisions 17-UI-95605 and 17-UI-95606 ~ Dismissed
Solicitudes para Revisar Decisiones de Audiencias 17-UI-95605 y 17-UI-05606 ~ Denegadas

Hearing Decision 17-UI-95607 ~ Modified, Overpayment and Penalties
Decisión de Audiencia 17-UI-95607 ~ Modificada, Sobre pago y Sanciones

PROCEDURAL HISTORY: On September 21, 2017, the Oregon Employment Department (the Department) served notice of two administrative decisions concluding the employer discharged and suspended claimant for misconduct (decisions # 122336 and # 133750). On September 22, 2017, the Department served notice of another administrative decision assessing a \$1,748 overpayment, \$524.40 monetary penalty and 32 penalty weeks (decision # 193665). Claimant filed timely requests for hearing. On October 24, 2017, ALJ S. Lee conducted a consolidated hearing, and on October 24, 2017 issued Hearing Decision 17-UI-95605 concluding claimant's suspension was not for misconduct, Hearing Decision 17-UI-95606 concluding claimant's discharge was not for misconduct, and Hearing Decision 17-UI-95607 reducing claimant's overpayment to \$552, his monetary penalty to \$165.60, and his penalty weeks to 16. On November 7, 2017, filed timely applications for review of all three hearing decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-95605, 17-UI-95606, and 17-UI-95607. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2017-EAB-1283, 2017-EAB-1284 and 2017-EAB-1286).

CONCLUSIONS AND REASONS: Claimant's applications for review of Hearing Decisions 17-UI-95605 and 17-UI-95606 are dismissed as non-justiciable. On review, Hearing Decision 17-UI-95607 is modified for the reasons explained herein.

Hearing Decisions 17-UI-95605 and 17-UI-95606. The outcomes of Hearing Decisions 17-UI-95605 and 17-UI-95606 allowed claimant benefits. No portion of those hearing decisions was adverse to claimant or had any practical effects on his rights or interests, and claimant has not assigned error to or requested reversal of any portion of those decisions. In consideration of our obligation to issue decisions that are consistent with sound principles governing judicial review and address only existing controversies between parties, we decline to address matters that will have no practical effect on the

rights of the parties to the controversy. *See Barcik v. Kubiacyk*, 321 Or 174, 895 P2d 765 (1995); *Brumnett v. PSRB*, 315 Or 402, 848 P2d 1194 (1992). The applications for review of those decisions therefore present no justiciable controversy and are dismissed.

Hearing Decision 17-UI-95607. EAB reviewed the entire hearing record in this matter. On *de novo* review and pursuant to ORS 657.275(2), the findings of fact and reasoning in Hearing Decision 17-UI-95607 are **adopted**. We conclude on the basis of those findings and reasoning that claimant is subject to repay an overpayment totaling \$552, he must pay a monetary penalty of \$165.60, and he is subject to 16 penalty weeks in which he is ineligible to receive benefits that would otherwise be payable to him for those weeks.¹

DECISION: Claimant's applications for review of Hearing Decision 17-UI-95605 and 17-UI-95606 are dismissed, as outlined above. Hearing Decision 17-UI-95607 is modified, as outlined above. *Las solicitudes del reclamante para revisar Decisiones de Audiencias 17-UI-95605 y 17-UI-95606 son denegadas como se describe anteriormente. Decisión de la Audiencia 17-UI-95607 se modifica, de acuerdo a lo indicado arriba.*

J. S. Cromwell and D. P. Hettle.

DATE of Service: December 4, 2017

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.

¹ We note that the ALJ's order in Hearing Decision 17-UI-95607 inadvertently omitted reference to the monetary penalty; however, the ALJ found as fact that six misrepresentations occurred and claimant's monetary penalty totaled \$165.60 and the ALJ's conclusions of law and analysis were consistent with those findings.